

JS 44C/SDNY
REV. 6/01/17

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Sears Holdings Corporation, et al.

DEFENDANTS

ESL Investments, Inc.
Wilmington Trust, National Association
Cyrus Capital Partners, L.P.

19CV 8002

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ray C. Schrock, P.C., David J. Lender, Paul R. Genender, Jared R. Friedmann, and Sunny Singh
Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153
Telephone (212) 310-8000

ATTORNEYS (IF KNOWN)

See attached addendum

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Appeal from Order Determining the Amount to Surcharge Second-Lien Collateral Pursuant to Section 506(c) of the Bankruptcy Code [ECF No. 4793] (the "506(c) Order"), which was entered on August 8, 2019

Has this action, case or proceeding, or on essentially the same been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously Assigned _____

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

CONTRACT

- ☐ 110 INSURANCE
☐ 120 MARINE
☐ 130 MILLER ACT
☐ 140 NEGOTIABLE INSTRUMENT
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
☐ 151 MEDICARE ACT
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL. VETERANS)
☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
☐ 160 STOCKHOLDERS SUITS
☐ 190 OTHER CONTRACT
☐ 195 CONTRACT PRODUCT LIABILITY
☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
☐ 315 AIRPLANE PRODUCT LIABILITY
☐ 320 ASSAULT, LIBEL & SLANDER
☐ 330 FEDERAL EMPLOYERS' LIABILITY
☐ 340 MARINE
☐ 345 MARINE PRODUCT LIABILITY
☐ 350 MOTOR VEHICLE
☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
☐ 360 OTHER PERSONAL INJURY
☐ 362 PERSONAL INJURY MED. MALPRACTICE
☐ 365 PERSONAL INJURY PRODUCT LIABILITY
☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
☐ 371 TRUTH IN LENDING
☐ 380 OTHER PERSONAL PROPERTY DAMAGE
☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

FORFEITURE/PENALTY

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
☐ 690 OTHER

LABOR

- ☐ 710 FAIR LABOR STANDARDS ACT
☐ 720 LABOR/MGMT RELATIONS
☐ 740 RAILWAY LABOR ACT
☐ 751 FAMILY MEDICAL LEAVE ACT (FMLA)
☐ 790 OTHER LABOR LITIGATION
☐ 791 EMPL. RET. INC. SECURITY ACT

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
☐ 465 OTHER IMMIGRATION ACTIONS

ACTIONS UNDER STATUTES

BANKRUPTCY

- ☒ 422 APPEAL 28 USC 158
☐ 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS

- ☐ 820 COPYRIGHTS
☐ 830 PATENT
☐ 840 TRADEMARK

SOCIAL SECURITY

- ☐ 861 MIA (1395ff)
☐ 862 BLACK LUNG (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID TITLE XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
☐ 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES

- ☐ 375 FALSE CLAIMS
☐ 376 QUI TAM
☐ 400 STATE REAPPORTIONMENT
☐ 410 ANTITRUST
☐ 430 BANKS & BANKING
☐ 450 COMMERCE
☐ 460 DEPORTATION
☐ 470 RACKETEER INFLUENCE & CORRUPT ORGANIZATION ACT (RICO)
☐ 480 CONSUMER CREDIT
☐ 490 CABLE/SATELLITE TV
☐ 850 SECURITIES/ COM-MODITIES/ EXCHANGE
☐ 890 OTHER STATUTORY ACTIONS
☐ 891 AGRICULTURE ACTS
☐ 893 ENVIRONMENTAL MATTERS
☐ 895 FREEDOM OF INFORMATION ACT
☐ 896 ARBITRATION
☐ 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
☐ 950 CONSTITUTIONALITY OF STATE STATUTES

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☐ 440 OTHER CIVIL RIGHTS (Non-Prisoner)
☐ 441 VOTING
☐ 442 EMPLOYMENT
☐ 443 HOUSING ACCOMMODATIONS
☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
☐ 446 AMERICANS WITH DISABILITIES - OTHER
☐ 448 EDUCATION

PRISONER PETITIONS

- ☐ 463 ALIEN DETAINEE
☐ 510 MOTIONS TO VACATE SENTENCE 20 USC 2255
☐ 530 HABEAS CORPUS
☐ 535 DEATH PENALTY
☐ 540 MANDAMUS AND OTHER

PRISONER CIVIL RIGHTS

- ☐ 550 CIVIL RIGHTS
☐ 555 PRISON CONDITION
☐ 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

REAL PROPERTY

- ☐ 210 LAND CONDEMNATION
☐ 220 FORECLOSURE
☐ 230 RENT LEASE & EJECTMENT
☐ 240 TORTS TO LAND
☐ 245 TORT PRODUCT LIABILITY
☐ 290 ALL OTHER REAL PROPERTY

Check if demanded in complaint

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE

Check YES only if demanded in complaint

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32)..

JURY DEMAND: ☐ YES ☐ NO

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from [Specify District] ☐ 6 Multidistrict Litigation (Transferred) ☐ 7 Appeal to District Judge from Magistrate Judge
- ☐ a all parties represented ☐ b At least one party is a pro se. ☐ 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

- | | | | | | | | | |
|--------------------------|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| CITIZEN OF THIS STATE | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | PTF <input type="checkbox"/> 3 | DEF <input type="checkbox"/> 3 | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF <input type="checkbox"/> 5 | DEF <input type="checkbox"/> 5 |
| CITIZEN OF ANOTHER STATE | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | FOREIGN NATION | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT AT THIS TIME, I HAVE BEEN UNABLE, WITHIN REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS.

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21. DO NOT check either box if this is a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☒ WHITE PLAINS ☐ MANHATTAN

DATE 8/26/19

SIGNATURE OF ATTORNEY OF RECORD

Receipt #

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO
☒ YES (DATE ADMITTED Mo. Jan. Yr. 2007
Attorney Bar Code # 4456349

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

ADDENDUM

The email addresses, office addresses, and telephone numbers of Appellees' counsel and counsel for other parties in interest are as follows:

1. Party: **Appellee:** **ESL Investments, Inc.**
Attorneys: Cleary Gottlieb Steen & Hamilton LLP
Thomas J. Moloney, Sean A. O'Neal,
Andrew Weaver and Katherine R. Lynch
One Liberty Plaza, New York, NY 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999
2. Party: **Appellee:** **Wilmington Trust, National Association, as Indenture Trustee
& Collateral Agent**
Attorneys: Seyfarth Shaw LLP
Edward M. Fox, Steven Paradise and Owen Wolfe
60 Eighth Avenue
New York, NY 10018
Telephone: (212) 218-4646
Facsimile: (917) 344-1339
3. Party: **Appellee:** **Cyrus Capital Partners, L.P.**
Attorneys: Milbank LLP
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2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Brian Kinney
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
4. Party to the Order: **The Official Committee of Unsecured Creditors of Sears
Holdings Corporation, et al.,**
Attorneys: Akin Gump Strauss Hauer & Feld LLP
Ira S. Dizengoff, Philip C. Dublin,
Joseph L. Sorkin, and Lacy M. Lawrence
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

5. Party to the Order: ESL Investments, Inc.

Attorneys: Cleary Gottlieb Steen & Hamilton LLP
Thomas J. Moloney, Sean A. O'Neal,
Andrew Weaver and Katherine R. Lynch
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Telephone: (212) 225-2000
Facsimile: (212) 225-3999

**6. Party to the Order: Wilmington Trust, National Association, as Indenture Trustee
& Collateral Agent**

Attorneys: Seyfarth Shaw LLP
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60 Eighth Avenue
New York, NY 10018
Telephone: (212) 218-4646
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7. Party to the Order: Cyrus Capital Partners, L.P.

Attorneys: Milbank LLP
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